IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5282 of 1991

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVIDNBHAI N LEUVA

Versus

AMRELI NAGARPALIKA

Appearance:

MR PJ KANABAR for Petitioners

MRS SINGITA N. PAHWA for MR PM THAKKAR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/04/2001

ORAL JUDGEMENT

1. The petitioners herein challenge the demand raised by the Municipality arising from grant of occupancy rights in respect of certain shops to the petitioners by way of public auction, the demand having arisen from the terms and conditions of the auction.

2. Certain facts are not in dispute and/or

undisputable.

3. The respondent Municipality had constructed a shopping centre which was in the form of a number of shops. The Municipality had issued a public notice for auctioning the said shops. The petitioners participated in the said auction and the respective petitioners were successful bidders at the auction in respect of Shop No.36, shop no.4, shop no.34 and shop no.8 respectively. The petitioners, as successful bidders in respect of particularly these four shops, were required to pay occupancy price as demanded by the Municipality. Possession was handed over in respect of the relevant shops to each of the petitioners. The petitioners are thereafter occupying the respective shops and carrying on their respective businesses in those shops. However, the petitioners contend that subsequently a further demand was raised by way of monthly rent at the rate of Rs.300/-, Rs.500/-, Rs.300/- and Rs.500/- respectively in respect of each of the said shops, which is illegal, unjustified and outside the scope of the allotment made to the petitioners in pursuance of the public auction. It was contended that the occupancy price paid by each of the petitioners as a result of their being successful bidders in respect of each of the shops at about the time of handing-over possession to each of them, was a consolidated amount for the use and occupation of each of the shops for a period of ten years as per the terms of the auction, and no further demand for monthly payment, whether by way of rent or otherwise would be justified on facts or in law.

4. Learned counsel for the petitioner has sought to raise certain factual disputes as to what were the terms and conditions of auction. In this context it was sought to be contended that the only terms and conditions of auction which would apply to the facts of the case were those conditions which were stipulated in the public notice inviting tenders (at Annexure-A to the petition). However, learned counsel for the respondent Municipality has pointed out in the affidavit-in-reply that the terms and conditions of auction and also the terms and conditions under which the successful bidder would be granted occupancy rights in respect of the shops in question, though set out partly in the public notice, were not exhaustively set out therein. In this context it was pointed out that the public notice at Annexure-A itself contemplates that the terms and conditions of auction, and other details, pertaining to the lay out of the shops and other allied and relevant information pertaining to the shops will be made available at the

office of the Municipality, and which will also be read out at the time of the auction. Learned counsel for the respondent further points out by way of affidavit in reply and the annexures thereto, that the petitioners had addressed a letter to the President of the Municipality (at Annexure-I to the affidavit) dated 19th July 1990, in the context of the auction to be held on 25th July 1990, that the petitioners have personally read, understood and accepted as binding all other relevant information and material pertaining to the situation, site, details, terms and conditions, plan, lay out, etc. pertaining to the shops, and pertaining to the allotment of the shops to the successful bidders at the proposed auction. The said affidavit in reply of the respondent Municipality also refers to Annexure-II, which sets out in detail the other terms and conditions pertaining to the auction, and pertaining to the rights and obligations which would attach to each successful bidder, on the grant of the occupancy rights in respect of each of the relevant shops for a period of ten years. There is no controversy that the occupancy rights in respect of each of the shops was to be granted to the successful bidders for a period of ten years. There is also no controversy, at least at the final hearing stage of the matter that the occupancy rights in respect of the said shops was factually granted to each of the petitioners on payment of the occupancy price quantified for the period of ten years. The only controversy is as regards the action of the respondent Municipality in demanding and attempting to enforce a further demand, arising from the grant of such occupancy rights, comprising of a monthly payment under the guise of rent and/or licence fee and/or any other monthly payment by any other name.

5. On the facts of the case the shops for which the petitioner nos.1 and 3 bid carried the basic price (upset value) of Rs.1,50,000, whereas the shops for which petitioner nos.2 and 4 bid carried the upset price of Rs.2,50,000/-. As against this, as a result of the bidding process, and the bids which were in fact accepted, the petitioner nos.1 to 4 were required to make payment of Rs.1,35,000/-, Rs.3,07,000/-, 1,79,000/- and Rs.3,18,000/- respectively. According to the petitioners, therefore, this was the total consideration payable by way of occupancy price for a period of 10 years, in respect of each of the four shops in respect of which they were successful bidders.

6. The controversy, therefore, which arises in the present petition is two-fold. Firstly, whether on the facts of the case, any further amount apart from the

occupancy price referred to hereinabove for the period of ten years, is at all payable by the petitioners, in view of the terms and conditions of the auction sale. Secondly, whether any monthly amount is payable, by way of rent or under any other name, and if payable, such demand for monthly payment would be in accordance with law.

7. It would be advantageous to first settle the factual controversy as to whether any additional monthly amount would be payable or not.

7.1 Before dealing with this factual controversy, it is desirable to clarify certain aspects of the matter. It appears from the record of the case, from the documents produced on record, from the language used in the public notice, from the language used in the petition as also the affidavit-in-reply of the Municipality, that different names, different terms, different labels and different descriptions have been given by the parties at different points of time, for what is essentially the same payment. This is true in respect of the basic occupancy price charged for the grant of occupancy rights for ten years, and is also true in respect of the additional demand of monthly payment. It is, therefore, both desirable and necessary, to avoid confusion in the matter and also to keep clear the concept which would apply in law, that a uniform nomenclature be used and applied.

7.2 The terms and conditions which would attach to the successful bidders for the purpose of allotment of the shops, as set out in Annexure-II to the affidavit in reply, and particularly paragraph 5 thereof stipulate the details pertaining to the grant of occupancy rights for a period of ten years, by using multiple nomenclatures/names to describe this grant. The various descriptions used, and used simultaneously as part of the same sentence found in para 5 are: "basic value for use and occupation for 10 years, occupancy price, upset value, etc.". All these phrases and descriptions, without doubt and without any dispute on either side, attach to the grant of occupancy rights for ten years to the successful bidder of each shop. As suggested hereinabove, in order to retain a clear focus on the controversy, the use of such multiple nomenclature and ambiguous description of the grant of such a right, it is desirable to refer to it by a common standard phrase such as "occupancy price."

7.3 As aforesaid, there is no dispute between the

parties that this "occupancy price" is certainly the consideration payable by the successful bidder for being granted possession and exclusive right of use and occupation for a period of ten years. The controversy is only as regards whether any further consideration can be demanded or enforced.

7.4 Once again reverting back to clause 5 of Annexure-II viz. the terms and conditions attaching to the shops to be allotted to the successful bidders, the same chart referred to in clause 5 describes or refers to another obligation which would attach to the allottee of such shop in column 4 thereof. The heading of column 4 can best be described as "in addition to occupancy price, the amount chargeable for use and occupation per month per shop".

7.5 Thus, there can be no dispute that column 4 sets out, in clause 5 of the terms and conditions attached to the grant of occupancy rights, an additional obligation to pay a monthly amount per shop as designated in that column.

7.6 As aforesaid, in order to avoid confusion in the description or nomenclature, whether this additional monthly payment is described as additional monthly payment, rent, licence fee, or monthly compensation for use and occupation, etc., makes no difference. The essence of it remains that apart from the basic price payable by the successful bidder at or about the time of allotment, an additional monthly payment was contemplated as an obligation which attaches to the grant of the shop to each of the successful bidders.

7.7. The aforesaid interpretation is not based merely on the interpretation of the headings used above the column numbers 3 and 4 of the chart contained in condition no.5 of the terms and conditions. Even the subsequent paragraphs elaborate on the distinction between the essential difference between the two kinds of payment viz. one is a lump sum payment at or about the time of allotment to be made by the successful bidder, and the other is the monthly payment to be made thereafter. Just below the tabular form given in condition no.5, given by way of description to the said tabular form, a further observation in the nature of an explanatory note is also found. This recital below the tabular form clarifies that the figures stated above viz. the basic price and the monthly payment to be made for use and occupation are both to be treated as fixed amounts, and further transfer fee shall also be

chargeable.

7.8 Clause 7 of the terms and conditions further clarifies the above position. Clause 7 is in very plain language in Gujarati, which sets out that the successful bidder will be required to bear the cost of the stamp paper, obtain within 15 days of the successful bid the execution of the relevant contract, will be required to deliver the possession receipt, and only thereafter will the successful bidder be given actual possession of the shop in question for the use and occupation for ten years, that during the said 10 years' period additional payment will be required to be made every month in addition to the fixed occupancy price/basic price, as stated in clause 5 and this monthly payment will be required to be deposited in advance with the office of the municipality. The said clause 7 thereafter sets out additional terms and conditions such as levy of annual taxes, education cess, expenses in respect of electric connection, water connection, sewage connection etc.

7.9 The aforesaid clauses 5 and 7 deal with the obligations of the allottee at the time of initial allotment of the shops in question to the successful bidder. Thereafter clause 11 of the same terms and conditions further contemplate the rights of the parties on the expiry of the ten years period. The said clause 7 contemplates that on the expiry of the initial 10 years period, a further occupancy right may be granted for an additional ten years period on such renewed terms as to occupancy price and/or monthly charges for use and occupation thereof, as may be determined by the President of the Municipality, and subject to such further other terms and conditions which may be imposed. In other words, clause 11 also contemplates that though the initial 10 years period conferring the occupancy right on the successful bidder could be extended for an additional ten years period, the same would entail a possible variation both in the occupancy price and/or monthly charges for use and occupation.

7.10 Therefore, reading the terms and conditions as a whole, which have factually been accepted by each of the petitioners, there cannot be any controversy that occupancy rights had been granted to each of the petitioners in each of the shops, and the consideration therefor consisted of two parts. The first part of the consideration was the immediate lump sum payment, no matter what nomenclature is applied to the said payment, and the second obligation was to pay a monthly amount for the right to use and occupy the same shop for the same

ten years period, no matter whether the monthly payment is called rent or licence fee or monthly compensation for use and occupation etc. Again there can be no controversy as to the figures i.e. the amount which has been set out in the terms and conditions, and which is sought to be charged and recovered from the petitioners. There is no factual controversy on this aspect of the matter. The amounts which are sought to be levied and recovered from the petitioners is as per the terms and conditions set out in the aforesaid Annexure-I.

7.11 In the premises aforesaid, I find no hesitation in concluding that the petitioners had accepted the obligation to pay, in order to acquire the right to use and occupy the said shops for a ten years period, a total consideration, which the respondent Municipality chose to impose in two parts. One was the basic lump sum charge imposed, levied and recovered at the time of handing over possession to the successful bidder, and the second component of such consideration was the levy and recovery of the stipulated amount on a monthly basis.

8. The next question which would arise from the contentions raised by the learned counsel for the petitioner is as to whether such a two-component system of levying or imposing consideration, for what is basically a contract of letting, can be imposed or enforced.

8.1 It cannot be overlooked that the petitioners are grantees in respect of an exclusive right of use and occupation of the shops for a period of 10 years. This right has been conferred on them for valuable consideration, and this valuable consideration forms the basis of the contract between the parties as understood under the Contract Act. To my mind, the concept of valuable consideration, for which the parties to the contract agree to accept and impose reciprocal rights and obligations can be numerous and manifold. Valuable consideration for a contract is not necessarily confined to one mode or one condition or one obligation or one event. Each right and each obligation which is accepted by the parties to the contract, as forming the basis for the parties undertaking the mutual rights and obligations under the contract, constitute a bundle of facts which is commonly referred to as "consideration". When such consideration can be quantified in terms of money, or where the parties choose to express such consideration in terms of money, it is commonly referred to as "valuable consideration". However, this is only a general description of the phrase commonly used in law and is not

exhaustive in any sense. Thus, the fact that the respondent Municipality chose to impose an obligation upon the allottees a two-component system forming the total consideration, the same does not ipso facto become illegal merely because it is in two parts, one part being the basic lump sum immediate payment and the second component being a monthly payment. There is nothing inherently illegal, unethical and/or questionable in this two-component system which would conflict with or contradict the basic principles governing "consideration" within the meaning of the Contract Act. A similar principle with similar conclusions has also developed specifically in relation to "rent" payable by a tenant to a landlord within the meaning of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It is by now well settled that under the terms of letting a tenant may be under an obligation to pay monthly rent and may also be under an obligation to pay municipal taxes, panchayat taxes, education cess, other levies levied by local bodies, and/or any other periodic payment. All such obligations form part of the consideration for the landlord letting out the property to the tenant. Each of these different, separate and distinct obligations constitute the larger part of "rent" which forms the total consideration for letting out the premises. It is precisely on the basis of this principle that the case law has developed, and by now is well settled, that where rent includes the obligation to pay municipal taxes, this larger obligation to pay rent may be regarded to be a two-component system - one component being a monthly rent payable and the other component being the annual levy of municipal or other tax. Since the other component viz. the annual obligation to pay tax also forms part of rent, the Courts have consistently taken a view that in such a case, rent cannot be said to be payable by the month, and that therefore such a case would not fall under section 12(3)(a) of the Bombay Rent Act.

8.2 This aspect viz. the two-component system comprising of the larger concept of rent has also been visualised, discussed and its validity recognised by the Full Bench decision of this Court in the case of Municipal Corporation of City of Ahmedabad Vs. Canara Bank, reported at 1993(1) GLH 180. Of course, this was in the context of whether the element of municipal tax payable by the tenant to the landlord would be includable in the larger concept of rent for the purpose of computing Annual Letting Value of the premises, within the meaning of section 2(1-A) of the Bombay Provincial Municipal Corporations Act, 1949. Although the focus of attention in the case before the Full Bench was on the

definition of "annual letting value", the concept of two-component system and what constitutes the composite "rent" payable by the tenant to the landlord has been discussed in para 12 of the said decision. Para 12 of the said decision observes as under:

> "12. ....It is obvious that annual rent will have to be determined with reference to the monthly rent of such premises and it will depend upon assessment of reasonable rent at which such premises are expected to be let from year to year with reference to their use, meaning thereby, what the landlord would expect hypothetical tenant to pay for use and occupation of such premises would be the determinative of the monthly or annual rent of such premises. Now, it is obvious that where a landlord decides to let out his premises to a hypothetical tenant, he would expect him to pay reasonable rent as consideration for its use and occupation and would also expect him to bear the municipal taxes if the earlier tenant had so borne them. If the landlord is prepared to bear burden of municipal taxes, it is obvious that rent would be not for mere use and occupation of the premises by the tenant. But normally an average landlord would like to shift the burden of municipal taxes to his tenant. Therefore, the total consideration for use and occupation of rented premises by a tenant would consist of two parts: (i) actual rent for use and occupation of the premises which he pays to the landlord plus (ii) burden of municipal taxes on account of such occupancy by the tenant. Both these amounts jointly would constitute total consideration which a hypothetical tenant would pay to the landlord for getting use and occupation of these premises. Consequently, under section 2(1A)(ii), annual rent will consist not only of rent for use and occupation which is likely to be paid by a hypothetical tenant to the landlord but also municipal tax burden of such premises which is borne by tenant. ..."

8.3 It is therefore obvious that the two-component system of determining the total consideration for letting is, firstly, not contrary to any specific statute and secondly, it is in common use and practice and is acceptable in law.

9. The next contention sought to be raised by the

learned counsel for the petitioners is to the effect that it is not open to the Municipality as a statutory body governed by the provisions of the Gujarat Municipalities Act, to impose a levy such as a two-component system for the purpose of determining consideration for such letting. According to the learned counsel for the petitioners, section 208 of the Gujarat Municipalities Act, 1963 does not permit such a levy or imposition i.e. does not permit both the components to be levied simultaneously. In other words, according to him, the municipality could charge and recover only, either the flat basic charge levied at the time of letting for a period of ten years, or a monthly charge during the tenure of ten years, but not both of them simultaneously. Section 208 of the Gujarat Municipalities Act, 1963 reads as under:

"208. Opening, closing and letting of markets and slughter-house - (1) The municipality may from time to time open or close any public market or slaughter-house. It may also either take stallage or other rents or fees for the use by any person of any such market or slaughter-house, or from time to time sell by public auction or otherwise the privilege of occupying any stall or space in or of otherwise using any such market or slaughter-house.

(2) Any person who, without the permission of or a licence from the municipality, shall sell or expose for sale any article in the said markets or use the said slaughter-house, shall be punished with fine which may extend to fifty rupees."

9.1 In the context of the said section, learned counsel for the petitioners emphasises the particular phrase "it may also either take stallage or other rents or fees for the use by any person ...". In the aforesaid context it was urged that the said language used in the statute does not permit the use or application of the two-component system of consideration discussed hereinabove. Suffice it to say that the contention raised takes an over-simplistic view of the matter, and relies only upon the dictionary meaning of the word "either" and the dictionary meaning of the word "or", without considering their meaning in the context of the sentence as a whole. To my mind, the language of the said section, when seen as a whole, does not permit only one contingency to the exclusion of others. It only indicates that the word "or" has been used in the

adjunctive sense, whereby it enables the municipality to charge or to impose consideration in various forms under various circumstances, for the grant of privilege of occupying any stall or space or of otherwise permitting the use of any such market or slaughter house.

9.2 Learned counsel for the petitioners, in support of his contentions, sought to rely upon a decision of this Court in the case of Babubhai Khandubhai Vs. Amreli Municipality, reported at 14 GLR 662. In my opinion, the said decision would be of no assistance to the petitioners, particularly on the facts of the case. The ratio of the said decision is not principally focused on nor deals with what the municipality may legitimately do or is permitted to do under section 208(1) of the said Act. The ratio principally concerns itself with what the municipality cannot legally do under the said section. The entire focus of attention is on the particular resolution of the municipality which was the subject matter of the petition before the Court in that case, where it was found that the impugned resolution was clearly outside the scope, competence and powers of the municipality in so far as the said resolution proposes to charge construction costs to the intending lessees for becoming its lessees. It was on the interpretation of the specific resolution that the Court found that section 208(1) of the said Act does not confer any power on a municipality to charge construction cost of the building in question to the proposed allottees. Obviously, what other charges the municipality could legally have imposed was certainly not the subject matter of focus, or even the subject matter of any exhaustive discussion before that Court and therefore not encompassed in that decision.

9.3 Even otherwise, I am of the opinion that the imposition of a two-component system defining the larger bundle of consideration for entering into the contract of the nature contemplated by the transaction in question, would not be barred by section 208(1) of the said Act.

9.4 Learned counsel for the respondent Municipality has sought to rely upon a decision of this Court in the case of Gordhan Vs. Amreli Municipality, reported at 19 GLR 940. Once again the subject matter of interpretation in this decision was section 208, subsection (1), in the context of a resolution of the municipality enabling it to sell at a fixed price the privilege of occupying the shops for ten years. It was in this context that the Court interpreted the said section and concluded that it was permissible for the municipality to sell by public

auction or otherwise the privilege of occupying a stall for a limited period and that the municipality can determine reasonable rent for a period of ten years on the basis of the cost of construction. In such a case the Court found that the Municipality cannot charge something other than rent.

9.5 In my opinion, the aforesaid decision does not advance the case of the municipality any further for the simple reason that the controversy before the court in that case and consequently the observations of the court as to the interpretation of the said section are only in the context of the reasonable rent which could be computed and charged by the municipality for the period of ten years on the basis of the cost of construction. I reiterate that this decision also does not deal with the right of a municipality to impose and enforce a two-component system of consideration, for which an occupancy right could be granted for the specific period of ten years.

9.6 At best there are certain observations in para 5 of the said decision which may, by some stretch of imagination, lend aid to the contentions of the municipality. In para 5 of the said decision the Court has observed as under:

> "... If it is permissible for the municipality to charge rent on monthly basis or on annual basis or on the basis of a lease for a fixed period, it is open to the municipality to determine rent on any reasonable and rational basis."

At best these observations could be construed to mean only that lease rent or monthly rent or a rent on any other basis or on a mixed basis or the adoption of a multi-component system of charging rent can be imposed, provided it is reasonable and rational. Be that as it may, learned counsel for the petitioners has failed to make out a case that the adoption and imposition of the two-component system of consideration is in any manner contrary to law or is impermissible to a municipality under section 208 of the said Act.

10. In the premises aforesaid, I see no substance in the present petition, which requires to be dismissed. Accordingly this petition is dismissed. Rule is discharged with costs. Interim relief stands vacated.

11. At this stage learned counsel for the petitioners prays for extension of the interim relief in order to

approach the higher forum. For this specific purpose interim relief is extended upto 4th May 2001 with a clarification that no further extension shall be granted.

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